

IT-04-84-T  
①20297-D20293  
20 JUNE 2007

20297  
AT



International Tribunal for the  
Prosecution of Persons Responsible for  
Serious Violations of International  
Humanitarian Law Committed in the  
Territory of Former Yugoslavia since  
1991

Case No. IT-04-84-T  
Date: 20 June 2007  
Original: English

IN TRIAL CHAMBER I

**Before:** Judge Alphons Orie, Presiding  
Judge Frank Höpfel  
Judge Ole Bjørn Støle

**Registrar:** Mr Hans Holthuis

**Decision of:** 20 June 2007

PROSECUTOR

v.

RAMUSH HARADINAJ  
IDRIZ BALAJ  
LAHI BRAHIMAJ

*PUBLIC*

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DECISION ON WHETHER TO RESUME HEARING TESTIMONY OF WITNESS 8  
AND CALL CHAMBER WITNESS

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Office of the Prosecutor

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## I. Procedural History and Relief Requested

1. On 5 April 2007, the Chamber suspended the cross-examination of Prosecution Witness 8, inviting the parties to make confidential written submissions on whether the testimony had sufficient probative value to be continued.<sup>1</sup> Witness 8 was testifying about counts 15 and 16 of the Indictment, regarding the alleged abduction of Hajrullah Gashi and Isuf Hoxha from a bus by Accused Ramush Haradinaj and KLA soldiers under his command.<sup>2</sup>
2. The Prosecution submission requested the Chamber to call and examine a named person as a Chamber witness to elucidate the testimony of Witness 8, and only thereafter to decide whether to call Witness 8 to complete his testimony.<sup>3</sup> The Defence submission requested the Chamber to exclude the testimony of Witness 8 in its entirety without waiting to call the proposed Chamber witness, or alternatively to call Witness 8 to complete cross-examination.<sup>4</sup>

## II. Arguments of the Parties

3. The Prosecution argues that despite contradictions on some matters, the statements of Witness 8 are consistent on certain critical aspects relevant to the Indictment.<sup>5</sup> It argues that a statement given by the proposed Chamber witness corroborates key parts of the testimony of Witness 8, that the two witnesses together provide reliable evidence of the abduction of the two men and the identification of the body of one of them, and that it is consequently in the interests of justice that the Chamber hear the evidence.<sup>6</sup> According to the Prosecution, the Chamber should defer its decision on whether to continue the cross-examination of Witness 8 until it has heard the evidence of the proposed Chamber witness, and defer its determination of the weight to be given to the evidence of Witness 8 until the end of the trial, at which point

<sup>1</sup> T. 2594-2596.

<sup>2</sup> Revised Second Amended Indictment, 10 November 2006, paras 71-72.

<sup>3</sup> Prosecution's Written Submission Regarding Witness 8 and Motion for Trial Chamber to Call a Witness Pursuant to Rule 98 with Confidential Annexes, filed on 23 April 2007 ("Prosecution Submission"), paras 1, 10, Confidential Annex A, paras 18-19.

<sup>4</sup> Confidential Submission on Behalf of Ramush Haradinaj in Relation to the Testimony of Witness 8, filed on 24 April 2007 ("Haradinaj Submission"), paras 5, 29-30; Confidential Submission by Idriz Balaj Regarding the Continued Cross-Examination of Witness 08, filed on 25 April 2007 ("Balaj Submission"), paras 31-33; Confidential Submission on Behalf of Lahi Brahimaj in Relation to the Continued Cross-Examination of Witness 8, filed on 26 April 2007 ("Brahimaj Submission"), paras 10, 17-19.

<sup>5</sup> Prosecution Submission, para. 5, Confidential Annex A, paras 1-8.

the Chamber would be in a better position to evaluate it.<sup>7</sup> Finally, the Prosecution argues that the appropriate course would be for the Chamber itself to call the proposed new witness, because the witness refuses to appear voluntarily before the Chamber and because the need to call this witness emerged during the cross-examination of Witness 8.<sup>8</sup>

4. The Defence argues that the entire testimony of Witness 8 is manifestly unreliable and incredible and must consequently be excluded under Rule 89(D).<sup>9</sup> According to the Defence, the proposed Chamber witness, who was not an eyewitness to the alleged abduction,<sup>10</sup> does not corroborate – and in fact contradicts – the evidence of Witness 8,<sup>11</sup> and could not prove the facts alleged in Counts 15 and 16 of the Indictment.<sup>12</sup> If the Chamber does not exclude the entire testimony of Witness 8, then, in the Defence's view, he must be called to complete cross-examination under Rule 90(H)(i) of the Tribunal's Rules of Procedure and Evidence, Article 21(4)(e) of the ICTY Statute, Article 14(3)(e) of the International Covenant of Civil and Political Rights and Article 6(3)(d) of the European Convention on Human Rights.<sup>13</sup> The Defence submits that continued cross-examination of Witness 8 is nevertheless unlikely to clarify or resolve the contradictions of the testimony heard until now.<sup>14</sup>

### III. Discussion

5. Witness 8 was generally reluctant to answer questions during cross-examination. Despite repeatedly asserting the truth of the statements he had given to the Prosecution,<sup>15</sup> the witness conceded that he might have made mistakes in those statements.<sup>16</sup> His testimony contained many inconsistencies. For instance, he agreed to having previously stated that the man who allegedly abducted Hajrullah Gashi and Isuf Hoxha from the bus had not introduced

<sup>6</sup> Prosecution Submission, Confidential Annex A, paras 10-14, 16.

<sup>7</sup> Prosecution Submission, para. 9, Confidential Annex A, paras 8, 19.

<sup>8</sup> Prosecution Submission, para. 6, Confidential Annex A, paras 9, 15, 17-18.

<sup>9</sup> Haradinaj Submission, paras 5(a), 5(b), 21-25, 27, 30, Confidential Annexes A and B; Balaj Submission, paras 16-17, 28-29, 31, 33; Brahimaj Submission, paras 10, 17, 19.

<sup>10</sup> Haradinaj Submission, paras 19, 28; Balaj Submission, para. 33; Brahimaj Submission, para. 19.

<sup>11</sup> Haradinaj Submission, paras 6-28; Balaj Submission, paras 20-30, 33; Brahimaj Submission, paras 11, 14-16, 19.

<sup>12</sup> Balaj Submission, para. 30; Brahimaj Submission, para. 19.

<sup>13</sup> Haradinaj Submission, para. 5(c); Balaj Submission, paras 32-33; Brahimaj Submission, paras 18-19.

<sup>14</sup> Balaj Submission, para. 17; Brahimaj Submission, para. 19.

<sup>15</sup> T. 2557-2559, 2563-2564.

<sup>16</sup> T. 2562, 2568.

himself.<sup>17</sup> Yet, the witness testified that the man had introduced himself as “Haradinaj”, without giving his first name.<sup>18</sup> In a videotape recorded in 2006 and played in court, the witness stated that the man had introduced himself as “Ramush Haradinaj”.<sup>19</sup> Furthermore, Witness 8 testified in court that the bus was going from Đakovica/Gjakovë to Priština/Prishtinë.<sup>20</sup> Yet, in the videotape, the witness stated that it was headed for Prizren.<sup>21</sup> The witness was also inconsistent with regard to when and how many times he had met the Accused Ramush Haradinaj.<sup>22</sup> Most importantly, the witness’s demeanour in court indicated weak memory or mental confusion.

6. As a general rule, the proper time for the Chamber to make final decisions on the credibility and reliability of witnesses is at the end of the case. However, based on the evidence it has heard from Witness 8 until now, the Chamber considers him to be so lacking in reliability and credibility that it cannot rely on his testimony for any findings concerning the facts alleged in the Indictment. The interruption of the testimony of Witness 8 during cross-examination thus poses no threat to the Accused’s right to a fair trial. Presently, there is therefore no reason to call the witness to complete his cross-examination. If, at a later stage, the Chamber were to receive evidence from other sources that would shed a different light on the reliability and credibility of Witness 8 as now perceived by the Chamber, it would remain open to the Chamber to reconsider, *propriu motu* or on the motion of one of the parties, whether Witness 8 should be called to complete his testimony.

7. Regarding whether to call the proposed Chamber witness, the Prosecution’s arguments that the need to call him emerged during the cross-examination of Witness 8 and that the proposed witness has expressed his refusal to appear voluntarily before the Chamber are not persuasive reasons for the Chamber itself to call this person as a witness. Furthermore, the Chamber is not presently convinced of the need to call a witness who appears not to have been present at the time and place of the facts alleged in counts 15 and 16 of the Indictment. With this in mind, the Chamber considers that the appropriate procedure would be for the Prosecution to apply for leave to add the person to its witness list under Rule 73bis(F).

<sup>17</sup> T. 2561-2562.

<sup>18</sup> T. 2515, 2518.

<sup>19</sup> T. 2576, 2581.

<sup>20</sup> T. 2504-2508, 2556.

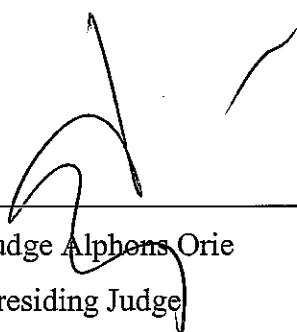
<sup>21</sup> T. 2580.

<sup>22</sup> T. 2515, 2517-2519, 2563-2566, 2582, 2584.

#### IV. Disposition

8. For the foregoing reasons, the Chamber decides not to call, at present, Witness 8 to complete his cross-examination and denies the Prosecution motion to call a Chamber witness.

Done in English and French, the English version being authoritative.



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Judge Alphons Orié  
Presiding Judge

Dated this 20th day of June 2007

At The Hague

The Netherlands

[Seal of the Tribunal]